

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEĆE KAI

GSK-KPA-A-113/13

Prishtinë/Priština, 27 February 2014

In the proceedings of:

S.T

S.T..

B. T..

Village Z.,

Municipality P./P.o

Kosovo

Appellants

vs.

R.J.

P. S.no. 415

3. S.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, EULEX Presiding Judge, Willem Brouwer, EULEX Judge and Sylejman Nuredini, Judge, as panel members, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/13/2008, dated 30 April 2008, regarding the case file KPA23187, after deliberation held on 27 February 2014, issues the following

JUDGMENT

The Appeal of S. T, B. T. and S.i T.against the decision of the Kosovo Property Claims Commission KPCC/D/A/13/2008, dated 30 April 2008, regarding the case file KPA23187, is dismissed as impermissible.

Procedural and factual background:

1. On 30 May 2007 R. J. (hereinafter “the claimant” or “the appellee”), as property right holder filed a claim with the Kosovo Property Agency (KPA) for confirmation of his property right over parcel no. 319, identified in possession list no. 2, issued on 10 March 2004 by Geodesy Office of the Republic of Serbia, Municipality of Podujevë/Podujevo, cadastral zone Zakut, place name Belasice – Belasice, categorized as Forest 2nd class with a surface of 1 ha 13 ar as well as repossession and compensation for the felled forest.
2. The claimant supported his claim by providing the KPA with copies of his ID card and the aforementioned possession list.
3. The claim was assigned the KPA case reference no. KPA23187.
4. On 28 February 2008 the KPA verified the aforementioned possession list and found the content confirmed by the possession list no. 2 of the Municipality Podujevë/Podujevo, cadastral zone Zakut, cadastral zone no. 71712034, parcel no. 319, place name Bellasicë – Bellasicë, issued by the United Nations Interim Administration Mission in Kosovo (UNMIK), dated 18 January 2008.
5. On 8 February 2008, the KPA notification team went to the place where the claimed parcel was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The property (commercial land without buildings, land/forest) was found without signs of occupation.
6. As nobody reacted to the notification, the claim was treated as uncontested.

7. On 30 April 2008 Kosovo Property Claims Commission (KPCC) issued the cover decision KPCC/D/A/13/2008, establishing the claimant's ownership right of the claimed property and confirming his entitlement to possession of the said property.
8. The KPCC decision was served upon the claimant on 7 April 2009.
9. With request of the same date the claimant requested the property to be taken under administration of the KPA. With decision dated 7 December 2010, the request was rejected. The decision was served on the claimant on 23 December 2010.
10. On 11 March 2013 the claimant requested repossession of the property.
11. On 15 April 2013 the KPCC decision in favour of the claimant together with an appeals information sheet was served on the current occupant of the property identified as S.T..
12. On 2 May 2013 S. T., S. T. and B. T. (henceforth: the appellants) filed an appeal against the KPCC decision KPCC/D/A/13/2008, dated 30 April 2008 in respect to the aforementioned property. In the Appeal they claim that the concerned parcel was purchased by them for an amount of 390 million Dinars, equalling an amount of 37,000 (thirty-seven thousand) Deutschmark (DM), as buyers from the seller V. J. (the claimant's father) through a contract concluded on 27 December 1986 in the presence of the claimant, his father, his wife V. his son D. and several other persons. The complete amount of the agreed purchase price had been paid to the seller.
13. They also submit that, before the service of the mentioned KPCC decision, they had not been aware that the ownership of the parcel had been contested. They also never noticed any KPA notification signs posted on the property although they had been "*living on the property*" the whole time. All documentation and evidence concerning the purchase, payment and the ownership of the property were burned in 1999 together with the Appellants' houses.
14. As evidence supporting their Appeal they submitted several individual statements from witnesses that were allegedly present when the purchase contract was concluded, confirming the purchase of the property, the full payment of the agreed sum and the loss of the documentation in the fire as well as documents issued by the Directorate of Economy and Development of the Municipality of Podujevë/Podujevo confirming that the appellants' houses in the village of Z. were burned in 1999.
15. The appellants request to annul the challenged KPCC decision and to reject the claimant's request.
16. On 5 August 2013 the Appeal was served on the claimant.

17. Dated 9 August 2013, the appellee, R. J., responded to the Appeal. He proposes that the Appeal is to be dismissed as inadmissible or, alternatively, rejected as unfounded. The Appellants had not participated in the proceedings before the KPA although they had been properly notified about the claim. Since they had not been party to the proceedings before the KPA they are not entitled to appeal the KPCC decision.

18. Alternatively, the appellee submits that he is the legal owner of the said parcel of land, that the plot had never been subject to a sale neither by his father, V. J., nor by him. Any allegation that the land had ever been sold is untrue. This is obvious from the fact that in 1986 there had been no legal limitations in place for the sale of land in Kosovo and the alleged transfer could consequently have been certified and registered in the cadastre records without any obstacle. No houses were ever built on the parcel in question.

Findings of the court:

19. The Appeal is impermissible.

20. According to Section 12.1 of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, *a party* may submit an appeal within thirty (30) days of the notification of the decision. Also Articles 176.1 and 177.1 of Law No. 03/L-006 on Contested Procedure provides that the right to file an appeal belongs to *the parties* of the first instance proceedings.

21. In the present case, the appellants were not parties at the first instance proceedings before the KPCC. To explain such a situation, the appellants assert that they became aware of the dispute concerning the parcels only on 15 April 2013 when the contested KPCC decision was served on S.T.. Indeed, Section 10.3 of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079 provides: “*A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.*”

22. Therefore, the Appellants’ right to file an appeal against the contested decision depends on the fact if they had been duly notified about the claim. The way to notify of a claim in this procedure is foreseen by section 10.1 of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to notify the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property or to make reasonable efforts to notify the claim to any person who may have a legal interest in the property.

23. On 8 February 2008 the KPA had put up a notification sign on the property with the legally required information on the claim in Albanian, Serbian and English language. This is documented by the report of the notification team of the KPA, photos and an aerial map showing the sign and indicating the GPS coordinates of the location where it was installed. The photos and the map indicate that the sign had been placed close to a road in a clearing where it was well visible.

24. The appellants themselves claim that they had used the property all the time. Consequently there is no indication that they could have missed the sign and not been aware about the claim.

25. Concluding from all aforementioned circumstances, the Supreme Court holds that the appellants had the opportunity to be aware of the proceedings and to file their defence at the first instance level. As they did not respond to the claim within the legal deadline and did consequently not become a party before the KPCC, they are not allowed to file an appeal before the Supreme Court against the KPCC decision. Thus, the Appeal is dismissed as impermissible pursuant to section 13.3 (b) of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 (see also article 196 and 195.1 (a) of the Law on Contested Procedure).

26. The court holds that even if the Appeal had been admissible, it would have to be rejected as unfounded since the appellants failed to prove their ownership rights to the contested property.

27. Consequently the Supreme Court of Kosovo decides as in the enacting clause.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and cannot be challenged through ordinary legal remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Willem Brouwer, EULEX Judge

Holger Engelmann, EULEX Registrar